

1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF MASSACHUSETTS
4

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

8 DAVID HEBERT,

9 Defendant.

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) Criminal Action
) No. 1:19-cr-10332-RWZ-1
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10
11 BEFORE THE HONORABLE RYA W. ZOBEL
12 UNITED STATES DISTRICT JUDGE
13

14 WAIVER OF INDICTMENT AND PLEA TO INFORMATION
15

16 September 17, 2019
17 11:07 a.m.

18 John J. Moakley United States Courthouse
19 Courtroom No. 12
20 One Courthouse Way
21 Boston, Massachusetts 02210

22 Linda Walsh, RPR, CRR
23 Official Court Reporter
24 John J. Moakley United States Courthouse
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1 P R O C E E D I N G S

2 THE CLERK: This is *United States versus David Hebert*,
3 and it's Criminal 19-10332.

4 Could I ask counsel to identify themselves for the
5 record, please.

6 MR. HAFER: Good morning, Your Honor. For the United
7 States, Assistant U.S. Attorney Zack Hafer.

8 MR. BAILEY: Good morning, Your Honor. Brad Bailey
9 for David Hebert, who is present beside me at counsel table.

10 THE COURT: I hardly recognized you.

11 MR. BAILEY: I'm changing.

12 THE COURT: You look good.

13 MR. BAILEY: Thank you, Your Honor.

14 THE COURT: I think the first issue is that there's a
15 plea agreement.

16 MR. HAFER: Yes, Your Honor.

17 THE COURT: And as I understand, Mr. Hebert, this is
18 your new version, and it's certainly better than the old
19 version --

20 MR. HAFER: It is.

21 THE COURT: -- but I still have questions. First,
22 there is nothing said about restitution.

23 MR. HAFER: That's correct, Your Honor. There's
24 forfeiture. There's not restitution here. There's a
25 forfeiture agreement, but there's not restitution beyond --

1 THE COURT: What does that mean with respect to what
2 happens to any money that is -- or it's a money judgment
3 forfeiture. What happens to the money? Does it go back to the
4 people from whom it was taken or does the government keep it?

5 MR. HAFER: No. Here it will go to the government's
6 sort of general fund for any time it forfeits money.

7 THE COURT: So the people who paid don't get anything
8 back.

9 MR. HAFER: Correct, Your Honor. Under this
10 agreement, under this portion of this agreement today, that is
11 correct with respect to this money.

12 THE COURT: And will the government ultimately seek
13 some kind of a restitution order in this case?

14 MR. HAFER: In this case I think no. The larger
15 case --

16 THE COURT: I'm not talking about the larger.

17 MR. HAFER: In this case I do not anticipate there
18 being restitution.

19 THE COURT: And then the other thing is the perennial.
20 What is the consideration? There's reference to consideration
21 for the waiver of appellate rights, but what is that
22 consideration?

23 MR. HAFER: I know we've had this conversation before.
24 I know we don't see it exactly the same, but what I will say
25 again here is Mr. Bailey and I engaged in extensive

1 conversations about the scope in terms of this agreement. And
2 there are no, obviously, promises, rewards or inducements that
3 are not in the agreement, but we agreed that, given the
4 position the government was taking on the guidelines, the
5 agreement that the government would recommend a low end of the
6 guidelines sentence, and the terms and position on forfeiture,
7 that in return for that -- and the reciprocal appellate waiver
8 that the government is also agreeing to, that as part of the
9 gestalt of negotiations here, the appeal waiver was part of the
10 consideration in return for low end, reciprocal waiver,
11 forfeiture, and position on the guideline.

12 THE COURT: Reciprocal waiver of?

13 MR. HAFER: Reciprocal of waiver. This isn't one -- I
14 know Your Honor at times has been presented with plea
15 agreements from us where it's a one-way waiver. Only the
16 defendant is waiving appellate rights, and here the government
17 is also waiving any appellate rights.

18 THE COURT: Well, only to the extent of a sentence.

19 MR. HAFER: Well, yes, with the same range, but that
20 is correct.

21 THE COURT: Mr. Bailey, what is your position? I
22 guess you do have to do what the government says. That's the
23 problem with these agreements.

24 MR. BAILEY: Well, it is, Your Honor, on a sort of
25 theological basis, I guess, but this is the product of

1 negotiation, and the government has accurately represented --

2 THE COURT: Well, the government has all the horses.

3 MR. BAILEY: That's accurate.

4 MR. HAFER: Only when the evidence is good, Your
5 Honor.

6 MR. BAILEY: And having once been the government, I
7 can't disagree with that, Your Honor.

8 THE COURT: All right. Now, Mr. Hebert -- is that how
9 you pronounce your name?

10 THE DEFENDANT: Hebert, yes, Your Honor.

11 THE COURT: Hebert?

12 THE DEFENDANT: Yes.

13 THE COURT: I understand that you are prepared to
14 offer a plea of guilty to this information which charges you in
15 three counts with various violations of the criminal code.
16 Namely, that you participated in a conspiracy to extort money
17 from certain marijuana places; that you did in fact extort
18 money is Count 2 from these places; and third, you ultimately
19 made false statements under oath to government agents. Those
20 are the three charges. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, the way we will proceed -- first, let
23 me explain to you that you are offering to plead guilty.

24 Before I can accept that offer, I need to ask -- I need to make
25 sure, number one, that you understand the nature of the

1 charges, that you understand what you're giving up by pleading
2 guilty. I have to make sure that you're doing it voluntarily
3 and not under some compunction or compulsion, and finally, I
4 have to make sure that you did in fact do what the government
5 has accused you of doing.

6 And in a proceeding like this, which is not a trial,
7 where witnesses come and are questioned, the only way to do
8 that is by asking you the questions that lead me hopefully to
9 the answer that we want. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And before we get to the questions, the
12 clerk will swear you, and you should also understand that once
13 you've taken the oath, if you knowingly give false answers to
14 any of the questions, the government has the option also of
15 prosecuting you for perjury. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you want to go ahead?

18 THE DEFENDANT: Yes, Your Honor.

19 THE CLERK: Mr. Hebert, to these three counts of this
20 information charging you at 18 U.S.C. 1951, extortion
21 conspiracy; Count 2, 18 U.S.C. 1951, extortion and aiding and
22 abetting; and Count 3, sir, 18 U.S.C. 1001(a)(2), false
23 statements, sir, how do you plead to these three counts of this
24 information, guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE CLERK: Could I ask you to raise your right hand.
2 (Defendant sworn.)

3 THE DEFENDANT: I do.

4 THE CLERK: Thank you, sir. You can be seated, sir,
5 and just speak into the mike for the questions from the Judge,
6 please.

7 MR. BAILEY: Your Honor, not really my place, but we
8 might have put the cart before the horse. I don't think he's
9 executed the waiver of indictment.

10 THE COURT: You're right. Thank you. So please sit
11 down. We'll do that one, too.

12 Before you sign that, Mr. Hebert, understand that you
13 have a right under the Constitution not just to a trial, which
14 we're going to talk about a little later on, but also you have
15 a right to insist that if the government is going to accuse you
16 of a felony, that it first go to a body of 21, I think, or 23
17 citizens who are called a grand jury. And they hear only what
18 the government offers -- provides to them in the way of
19 evidence, but then they decide whether, based on what they have
20 heard in the way of witnesses and have seen in the way of
21 documents, whether they are persuaded that there is probable
22 cause to believe that you did commit these offenses. They do
23 not find you guilty. They simply determine whether there is
24 probable cause to accuse you, and then if they find there is
25 such, then they will sign -- their foreperson will sign a

1 document called an indictment.

2 You have a right to waive this procedure and agree
3 that the government may just charge you by saying here is a
4 document that accuses you, but that one we don't call an
5 indictment, we call it an information, but it bypasses that
6 right that you have to insist that the government first go
7 before a grand jury and have them decide whether you should be
8 accused. Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And you're willingly giving up that right?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Thank you, Mr. Bailey.

13 MR. BAILEY: You're welcome, Your Honor.

14 THE COURT: All right. Now, we have taken the oath,
15 right?

16 THE CLERK: Yes.

17 THE COURT: So, Mr. Hebert, the government has accused
18 you with three different counts. I have trouble seeing them.
19 It has accused you of extortion conspiracy, substantive
20 extortion, and false statements, as I previously explained.
21 What it has to prove with respect to the conspiracy is what has
22 to be proven on every conspiracy. It has two elements. One,
23 that there was an agreement between two or more people to do
24 something illegal, in this case to try to extort money from the
25 marijuana people. And in this case also there is the -- and

1 the second element is that you willingly and with an
2 understanding of what this agreement was about joined in it.
3 Do you understand that that's -- those are the two major
4 elements of any conspiracy?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Now, in this case because it is a specific
7 conspiracy to commit extortion, the government also has to
8 prove that you acted under some kind of official right or that
9 it was some kind of an official act on behalf of the City of
10 Fall River. Do you understand that that's another element?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: That's what the government has to prove.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And, finally, it has to prove that in some
15 way this entire -- this transaction, in the course of this
16 transaction affected interstate commerce. The Federal Courts
17 have jurisdiction only of cases that arise under Federal law or
18 that have some -- that have some impact on interstate commerce.
19 The Interstate Commerce Clause is very broad, and in this case,
20 to the extent there may have been transactions that involved or
21 potentially involved a product -- commerce between states, like
22 selling marijuana from one or buying marijuana in New York and
23 selling it here, the government has to prove that there was
24 some impact on that commerce among states in connection with
25 this conspiracy. Do you understand?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Indeed, it is -- this is equally as
3 truthful for the second count. Now, the second count charges
4 you with extortion. And here it has to prove, number one, that
5 you obtained property from somebody else that was -- with that
6 person's consent; that you obtained it under, again, under
7 color of official right but as somebody who was representing
8 the City of Fall River or its mayor; and, again, that there was
9 an effect or an interruption or interference with interstate
10 commerce, which has the same element as I previously explained.
11 So that's the second count.

12 The third count says that you made false statements --
13 I have forgotten the date. That on or around -- in January of
14 2019 you made statements. It doesn't say to whom, but to
15 somebody within the jurisdiction of the executive department,
16 which presumably is the FBI or some other arm of law
17 enforcement, and that that statement was false; that it was
18 material, that is, it was something that was important for that
19 FBI agent or whatever to know in the course of his or her
20 investigation; and that you knew what you were doing. You
21 acted knowingly and willfully, that you didn't make these
22 statements by accident and that you made them with the intent
23 to violate the law. Do you understand that that's what the
24 government has to prove on Count 3?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. Now, let me go back for a moment to
2 your rights again. You have been accused now of committing
3 these felonies. You have an absolute right under the
4 Constitution to insist that the government -- to go to trial
5 and then to insist that the government prove its case beyond a
6 reasonable doubt. That trial also involves 12 citizens who
7 would be -- who would report to the court as summoned. They
8 would be chosen totally without any prior understanding of who
9 they are, and you have a right to object to some of them if you
10 choose to do so, but ultimately, the 12 jurors who are chosen
11 to try this case have to hear all of the evidence the
12 government has to -- will present, they hear all of the
13 evidence you may have to present, or you may wish to present,
14 and then they have to decide privately, after having been
15 instructed on the law, whether they unanimously agree on each
16 count whether the government has proven you guilty beyond a
17 reasonable doubt.

18 You see, it's a very different burden from that which
19 the grand jury has. The grand jury has to find whether there
20 was probable cause to believe. This jury of 12 has to find
21 unanimously that you are guilty beyond a reasonable doubt. Do
22 you understand that that's -- that is what you're giving up?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: It's a very important right.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: You have the right, as I said, to offer
2 your evidence at such a trial, but -- and including your own
3 testimony. You also have a right not to testify, and if you
4 choose not to testify, if there were to be a trial, the jury
5 would be instructed that they may not take the fact that you
6 did not testify into account in determining whether you're
7 guilty or not, that you have an absolute right to say to the
8 government, you have accused me. Now you prove it. I'm not
9 going to help you by doing anything. Do you understand?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: You have a right in the course of such a
12 trial also to cross-examine every witness that the government
13 may give -- may call to give evidence against you. You are
14 giving that up, too. Do you understand?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You have a right to have a lawyer at every
17 stage of a criminal proceeding including certainly a trial, and
18 obviously by giving up the trial, you also give up your right
19 to have a lawyer at a trial which is not. Do you understand?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has anybody made any promises to you to
22 get you to plead guilty?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Has anybody put any pressure on you to do
25 this?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Now, let me go back again and outline to
3 you the penalties that obtain on a decision of guilty -- of
4 guilt. There are two. One is the maximum penalty, which is
5 defined in the statutes that also define the offense. And in
6 this case on counts -- on the extortion counts, both conspiracy
7 and substantive extortion, the statute calls for a maximum
8 sentence of imprisonment of 20 years on each plus a period of
9 supervised release of three years, a fine of up to \$250,000,
10 and then there is on each count a mandatory special assessment
11 of \$100.

12 Now, on Count 3, the maximum sentence of imprisonment
13 is five years. Again, there is a period of supervised release
14 of three years, a fine of up to \$250,000, and again, the
15 assessment of \$100. These offenses also allow for the
16 government to seek forfeiture of ill-gotten gains.

17 Now, when the statute has -- when there are three
18 different statutes, the prison sentences -- the total maximum
19 prison sentences are added up. So the total maximum in this
20 case would be 45 years. The period of supervised release
21 remains the same for all three. It doesn't get added. So that
22 would be three years for all three counts. The financial
23 penalties are also added together. So the total maximum fine
24 is \$750,000 and the total special assessment is \$300.

25 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. The other set of sentencing rules
3 is very different. They are called guidelines, and the
4 guidelines operate as follows: They look first at the offense
5 itself and assign numerical values called offense levels. They
6 start out with the base offense level, which is the same in
7 every case depending on what the accusation is. So extortion
8 has a particular base offense level, conspiracy has a
9 particular base offense level. That's what we start with. And
10 there is also a mechanism for working out duplication when you
11 have more than one count.

12 Then they look at certain factors that have to do with
13 the commission of the offense. In this case, as the plea
14 agreement has set out, there are certain added offense levels
15 because the payment was greater than \$40,000, another one
16 because the -- because the offense involved, not necessarily
17 you, but it involved an elected official. So all of these
18 points the government in the plea agreement, which I gather you
19 agree with, were added and then some were subtracted.

20 But we start out with a base offense level of 12, add
21 6 because of the size of the payment that was made, and then
22 add another 4 because it involved a state official. So that
23 got us to 22, I think, if my arithmetic is correct, and then we
24 subtract three levels because by pleading guilty you are deemed
25 to accept responsibility, and that takes us to a total offense

1 level of 19. The guidelines then --

2 MR. HAFER: I'm sorry to interrupt, Your Honor.

3 Mr. Bailey has reserved all rights -- that's the U.S.

4 Attorney's position on the guidelines, but Mr. Bailey has
5 reserved all his rights.

6 THE COURT: So that's the government's position, and
7 in a little while I'll come to what happens next and then I
8 will go into what your position will be.

9 So, in any event, that leads us to a calculation of
10 19. I'm not exactly sure how the -- well, and then the second
11 set of facts the guidelines look at is any criminal record you
12 may have, and if there is a -- if there are prior convictions
13 for any felonies, then they are assigned again numerical
14 values, but these are called criminal history points. No.
15 What is it called? Categories. Before we get to the category,
16 we get to points, and then the points are translated into one
17 of six categories.

18 Once we know what the total offense level is and what
19 criminal history category applies, we go to a grid that I'm
20 sure Mr. Bailey has shown you, right?

21 MR. BAILEY: Yes.

22 THE COURT: So you know -- do you remember it?

23 THE DEFENDANT: Yes.

24 THE COURT: Vaguely?

25 THE DEFENDANT: Yes.

1 THE COURT: But you remember you go down on the
2 vertical axis until you come to the correct offense level?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Then you go across on the
5 horizontal level until you come to the correct criminal history
6 category, and where the two intersect, there are two numbers
7 and they represent months of imprisonment, and those are the
8 numbers that start the guideline calculation and start the
9 sentence as I need to ultimately decide.

10 I am not bound to accept those numbers. I can go up
11 or I can go down provided I have a reason for it, and I explain
12 the reason. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And once I've decided this, given your
15 plea agreement, you're kind of stuck with that. You can't even
16 appeal it. Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. So I will hear the Government's
19 outline of the evidence that it would present if and when we go
20 to trial.

21 MR. HAFER: Yes, Your Honor.

22 THE COURT: And, Mr. Hebert -- excuse me -- the last
23 question that I will ask you is did you do it, and what did you
24 do in connection with these accusations that have been lodged
25 against you. Do you understand?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: So listen carefully.

3 THE DEFENDANT: Yes.

4 MR. HAFER: Thank you, Your Honor.

5 If the case were to go to trial, Your Honor, just
6 generally, the government would prove its case with witness
7 testimony, civilian and law enforcement testimony, statements
8 of co-conspirators, statements by Fall River Mayor Jasiel
9 Correa, phone records, text records, e-mails.

10 THE COURT: What kind of statements by the mayor?

11 MR. HAFER: Well, co-conspirator statements he made to
12 individuals involved in the case either in person or --

13 THE COURT: Not public statements?

14 MR. HAFER: Correct, Your Honor, not public.

15 I have broken this down by count, and I'll do Counts 1
16 and 2 first. Just as a summary, the government would prove
17 with respect to Counts 1 and 2 that Mr. Hebert agreed to serve
18 and did in fact serve as a middleman in extortion of Marijuana
19 Vendor Number 3.

20 THE COURT: What was his job at the time?

21 MR. HAFER: Mr. Hebert's?

22 THE COURT: Was he working for the mayor?

23 MR. HAFER: Not in any official capacity, no, Your
24 Honor. Mr. Hebert is -- owns real estate, but no official
25 employment with the City of Fall River.

1 THE COURT: Okay.

2 MR. HAFER: The government will prove MJ Vendor Number
3 3's business was in and affecting interstate commerce, and that
4 essentially Mr. Hebert agreed to middleman an extortion of
5 Marijuana Vendor 3 by Jasiel Correa by obtaining money and a
6 mortgage discharge valued at approximately \$91,000 in return
7 for the issuance of --

8 THE COURT: Who was the mortgagee or the mortgagor?

9 MR. HAFER: The brother of MJ Vendor Number 3.

10 THE COURT: What did that have to do with Mr. Hebert?

11 MR. HAFER: Mr. Hebert had -- MJ Vendor Number 3's
12 brother had a mortgage. Mr. Hebert owns a lot of property. He
13 had a loan from MJ Vendor Number 3's brother. And essentially
14 MJ Vendor 3 went to his brother and said --

15 THE COURT: Got it.

16 MR. HAFER: And just to be very clear, the official
17 act here is the issuance of the nonopposition letter and the
18 host community agreement. Let me just briefly explain what the
19 government would prove at trial on those because it goes to the
20 official act. Massachusetts law first as established by the
21 Department of Public Health, now regulated by the Cannabis
22 Control Commission, in essence requires in order to ultimately
23 get a license to operate a marijuana business in the state, a
24 letter of nonopposition from the head of the municipality where
25 the business wants to operate, that typically states that the

1 head of the municipality has verified with the appropriate
2 officials and there's no zoning issues and that sort of thing.

3 Because these letters are essential to the marijuana
4 vendors, competition for them was fierce and substantial. In
5 addition to the nonopposition letter, Your Honor, the
6 government would prove that applicants need what's called a
7 host community agreement, I'll abbreviate that as HCA, which is
8 essentially an agreement between the marijuana company and the
9 local government that gives the local government up to three
10 percent of proceeds from the marijuana business and an annual
11 fee of \$50,000 essentially for the right to operate in that
12 city.

13 And we would prove at trial that the host community
14 agreements in Fall River were typically negotiated in
15 conjunction with the nonopposition letter. So the two official
16 acts, the issuance of the nonopposition letter and the host
17 community agreement.

18 THE COURT: But the host community agreement is not an
19 area agreement in this context, or is it?

20 MR. HAFER: Well, to the extent that it was
21 precipitated --

22 THE COURT: That wasn't --

23 MR. HAFER: Yes, Your Honor, but facially no, but they
24 are what all businesses have.

25 The government would prove that on or about July 11,

1 2018, Mr. Hebert offered to speak to Jasiel Correa on MJ Vendor
2 Number 3's behalf in order to obtain a nonopposition letter,
3 and that, in substance, Mr. Hebert told MJ Vendor Number 3 that
4 you're going to have to start helping this kid out because he
5 is going to help you. Initially Marijuana Vendor Number 3
6 agreed with Mr. Hebert that he would give Jasiel Correa a
7 \$25,000 bribe in return for the nonopposition letter. The
8 agreement was that that bribe payment eventually would consist
9 of two separate \$12,500 contributions to Mr. Correa's campaign
10 fund and then MJ Vendor Number 3 would disguise those payments
11 through friends and family of his.

12 As the transaction of the conspiracy evolved, MJ
13 Vendor Number 3, on behalf of his brother, forgave a mortgage
14 that was held for a value of approximately \$61,000 as an
15 additional payment as part of this transaction. Mr. Hebert
16 himself also gave Jasiel Correia an additional five to six
17 thousand dollars in cash as part of the essential quid pro quo
18 here, money and other things of value in return for the
19 nonopposition letter and host community agreements.

20 The government would prove that on or about August 21,
21 2018, Mr. Hebert hand-delivered two nonopposition letters to MJ
22 Vendor Number 3. He had two separate marijuana businesses, a
23 regular and an edibles business. Mr. Hebert hand-delivered
24 those letters to MJ Vendor 3 -- MJ Vendor Number 3 had two
25 businesses. That was the allegation in the information, is

1 that there were two letters of nonopposition. MJ Vendor 3 had
2 two separate marijuana businesses, a regular and an edibles
3 business. Mr. Hebert, we would prove, hand-delivered those
4 letters to MJ Vendor Number 3.

5 THE COURT: This is a separate transaction from the
6 first one?

7 MR. HAFER: Yes, Your Honor. And he gave the letters
8 at a cigar bar, and again, that's notwithstanding that
9 Mr. Hebert didn't have any formal role in the government of
10 Fall River.

11 And, finally, the government would prove on these two
12 counts, at the direction of MJ Vendor Number 3, several members
13 of his family and friends did in fact contribute \$12,500 to
14 Jasiel Correia's campaign in or about late August 2018 as
15 partial payment on the bribe, and the mortgage was in fact
16 discharged. In or about late August 2019, the mortgage held by
17 MJ Vendor Number 3's brother was discharged.

18 With respect to Count 3, Your Honor is correct,
19 January 15th, 2019, actually here on the ninth floor of the
20 U.S. Attorney's Office in the presence of agents from several
21 federal law enforcement agencies, Mr. Hebert made false
22 statements that he was not involved in any way in the approval
23 or obtaining of nonopposition letters for marijuana businesses
24 in Fall River and stated that he had never acted as a conduit
25 in any way to get money to Jasiel Correia. And obviously,

1 based on the proffer and the evidence with respect to Counts 1
2 and 2, the government would be able to prove that those
3 statements were in fact false and material. That's in essence,
4 Your Honor, a summary of what the government would prove at
5 trial and how it would prove it.

6 THE COURT: Mr. Hebert, can you please tell me in your
7 own words what, if anything, you had to do with getting money
8 from Vendor Number 3 and providing that vendor with the
9 necessary documents to operate this business.

10 THE DEFENDANT: Yes, Your Honor. As stated, Vendor
11 Number 3 is a close friend and business associate of mine, and
12 he requested help in obtaining a nonopposition letter. And I
13 contacted the mayor and helped facilitate getting it, and in
14 exchanged the mayor wanted support.

15 THE COURT: What was your position vis-a-vis the mayor
16 of the city at the time?

17 THE DEFENDANT: I had no position. I was a supporter.
18 I was friendly with the mayor. We supported him campaigning
19 and so on and so forth. The relationship was more of a
20 friendly relationship.

21 THE COURT: So you promised to provide the
22 nonopposition letters to Vendor Number 3 in return for getting
23 paid and for getting the mortgage discharged?

24 THE DEFENDANT: Yes. Essentially, yes.

25 THE COURT: Now, the mortgage discharge was your

1 mortgage, right?

2 THE DEFENDANT: A corporation that I owned real estate
3 in, yes.

4 THE COURT: But it had nothing to do with the city.
5 It was private for you?

6 THE DEFENDANT: A private mortgage, yes.

7 THE COURT: And the money that the five -- five or six
8 thousand dollars, where did that ultimately go?

9 THE DEFENDANT: I gave that to the mayor.

10 THE COURT: I'm sorry?

11 THE DEFENDANT: I gave that to Mayor Jasiel Correia.

12 THE COURT: And then did you in fact deliver to Vendor
13 Number 3 the nonopposition letters that it needed to get going?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: And did you on another occasion deliver to
16 that Vendor Number 3 nonopposition letters with respect to a
17 cigar shop or is that a separate shop?

18 MR. HAFER: I'm sorry. I don't think I was clear
19 enough. On one occasion Mr. Hebert delivered two letters at
20 the cigar shop to Vendor 3 for two separate marijuana
21 businesses, but it was one occasion, two letters, two
22 businesses.

23 THE COURT: Oh, okay.

24 So did --

25 THE DEFENDANT: Sorry, Your Honor. Just to be clear,

1 I also delivered \$12,500 in campaign donations from MJ Vendor
2 Number 3 to the mayor made out to his campaign.

3 THE COURT: And did you try to get this money or did
4 you get the money from Vendor Number 3 and/or his or her family
5 by again promising to give these nonopposition letters?

6 THE DEFENDANT: Yes, that was the essence.

7 THE COURT: That was part of the deal?

8 THE DEFENDANT: That was part of the deal, Your Honor,
9 yes.

10 THE COURT: Did you know it was against the law to do
11 that?

12 THE DEFENDANT: I wasn't thinking properly. I'm
13 sorry, yes. Yes.

14 THE COURT: Now, Count 3 is somewhat different. Here
15 that apparently pertains to something that happened after the
16 government decided to investigate, and here the accusation is
17 that you gave false information about what in fact you did to
18 the agents who were investigating the situation, specifically
19 you said that -- you told them that you were not involved in
20 any approval and opening of the marijuana dispensaries and that
21 you had never acted as a financial conduit for Mr. Correa. Do
22 you acknowledge that you did in fact mislead or try to mislead
23 the agents?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And what were the statements not

1 correct -- I mean, did you make these statements and were they
2 not honest?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And did you know that they were not true?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: I find that the defendant understands the
7 nature of the charges as well as the maximum penalty. I
8 further find that the plea is voluntary and that there is a
9 factual basis for it and will, therefore, accept it as to
10 Counts 1, 2 and 3.

11 Now, sentencing, Lisa?

12 THE CLERK: Yes. So I was looking -- what about
13 December 12th at 2:00?

14 MR. HAFFER: Your Honor, I don't have any objection to
15 the date being set now but just -- I have no objection to that
16 date being set. I think that's the best way to say it at this
17 point.

18 MR. BAILEY: That date works for the defense as well,
19 Your Honor.

20 THE COURT: I'm sorry. December 12th works for
21 everybody?

22 MR. BAILEY: Yes, it does.

23 THE COURT: So that is the next time, Mr. Hebert, when
24 we will meet, and between -- and the reason for the long delay
25 is that the case will now go to the Probation Office where a

1 probation officer will prepare what is called a presentence
2 report. It is very extensive. It talks about the offense, it
3 talks about any other people who may be involved, and it tells
4 me a lot about you, your personal background, physical and
5 mental health and so on, and it takes them that long to prepare
6 this report.

7 You will have an opportunity to see it before we next
8 get together. I ask you please to read it carefully. If there
9 are mistakes in it, let Mr. Bailey know so that they can be
10 corrected before we next get together. Okay?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Now, what about bail?

13 MR. HAFER: Your Honor, I think Mr. Bailey and I are
14 in agreement on the core conditions with the assistance of
15 Probation. The government is not seeking detention. The
16 government is seeking an unsecured bond of \$50,000. I think we
17 are all in agreement on that, and then beyond that the
18 conditions set forth on Page 5 of the pretrial services report
19 are all agreeable to the government.

20 MR. BAILEY: And they're agreeable to the defendant as
21 well, Your Honor, and they do include travel restricting --
22 being restricted to the continental United States. Mr. Hebert
23 does have his passport with him. He's prepared to surrender it
24 at this point, and he is ready also to sign the unsecured
25 appearance bond.

1 THE COURT: Well, the list that Probation has or
2 Pretrial Services has includes travel restricted to the
3 continental U.S. That's not a problem?

4 MR. BAILEY: No. I said it does include it. So we
5 agree with that. I'm sorry. I was inarticulate there.

6 THE COURT: Okay. If there's a problem with that, he
7 can always seek relief, and I assume there would be no
8 difficulty in getting it.

9 MR. BAILEY: Yes.

10 THE COURT: All right. So you are free to go
11 provided, Mr. Hebert, that you sign a bond that will say that
12 you are responsible for \$50,000 if for one reason or another
13 you don't show up at the next hearing or in any way violate any
14 conditions. And in addition to that, you shall report to
15 Pretrial Services, as directed by them, and they will work out
16 with you a schedule for making sure what's going on.

17 You shall not use or -- well, use any unlawful or
18 possess any unlawful narcotic drugs or other controlled
19 substances unless they're prescribed by some doctor, and that
20 includes marijuana. You shall submit to any testing of the use
21 of unlawful drugs by Probation or Pretrial Services, and that
22 may be random, but whenever they want you to do it, do it. And
23 you shall refrain from obstructing or attempting to obstruct in
24 any manner any of this testing and monitoring. There are
25 various ways in which people do this, but if they want you to

1 do it, do it honestly and straight. Any passport you have, you
2 shall surrender to Probation. You shall not obtain a passport
3 or other travel documents without first getting permission from
4 Probation during this period of time. And you may travel
5 within the continental United States, but if you need to go
6 outside the country, get permission first.

7 You shall avoid all contact, direct or indirect, with
8 any person who is or may be a victim or potential witness in
9 the investigation or prosecution of this case, including but
10 not limited to co-conspirators unless in the presence of
11 counsel. Co-conspirators are people like Mr. Correia.

12 MR. BAILEY: Judge, with regard to that, Fall River,
13 being a very small city, and my client being a business --

14 THE COURT: I'm sorry?

15 MR. BAILEY: Fall River being a small city and my
16 client being a business person, we expect a list from the
17 government so --

18 MR. HAFER: Yes. Yes, Your Honor. I'll provide --

19 THE COURT: So a list of people that you shouldn't
20 deal with will be given to you and you shall abide by it.

21 MR. BAILEY: Thank you, Your Honor.

22 THE COURT: And, finally, there are a bunch of
23 statutory conditions which you shall also observe, and I think
24 your next step -- has he gone to the marshal yet?

25 MR. BAILEY: He's been fingerprinted and given a DNA

1 swab, but I believe he still has to be photographed in the
2 marshal's office.

3 THE COURT: So you should please take care of that
4 when you leave here, and also connect with Ms. Hennemann in
5 Pretrial Services so that all of the documentation she needs
6 can be effectively executed.

7 MR. BAILEY: Yes, Your Honor.

8 THE COURT: Is there anything else?

9 MR. HAFER: Not from us, Your Honor.

10 THE COURT: Anything from you?

11 U.S. PROBATION: No. Thank you, Your Honor.

12 MR. BAILEY: Thank you, Your Honor.

13 THE COURT: And that's it. And I thank you, and thank
14 you for your good outline of the evidence.

15 MR. HAFER: Thank you, Your Honor.

16 THE COURT: And we are now in recess.

17 THE DEFENDANT: Thank you, Your Honor.

18 (Adjourned, 11:48 a.m.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, Linda Walsh, Registered Professional Reporter

4 and Certified Realtime Reporter, in and for the United States

5 District Court for the District of Massachusetts, do hereby

6 certify that the foregoing transcript is a true and correct

7 transcript of the stenographically reported proceedings held in

8 the above-entitled matter to the best of my skill and ability.

9 Dated this 11th day of March, 2020.

10

11

12 /s/ Linda Walsh

13 Linda Walsh, RPR, CRR

14 Official Court Reporter

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